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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/017,893	12/12/2001	Anthony Cadiente	SMBRP001	9942
22434	7590	08/05/2005	EXAMINER	
BEYER WEAVER & THOMAS LLP			GROSSO, HARRY A	
P.O. BOX 70250			ART UNIT	
OAKLAND, CA 94612-0250			PAPER NUMBER	
			3727	

DATE MAILED: 08/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/017,893

Applicant(s)

CADIENTE ET AL.

Examiner

Harry A. Grosso

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 February 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-51 and 54-85 is/are pending in the application.
- 4a) Of the above claim(s) 1-37, 44, 49, 51, 60 and 63 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 38, 50 and 83 is/are allowed.
- 6) ☒ Claim(s) 39, 41-43, 45-48, 54, 56-59, 61, 62, 64-72, 74-81, 84 and 85 is/are rejected.
- 7) ☒ Claim(s) 40, 55, 73 and 82 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>2/16/05</u> . | 6) <input type="checkbox"/> Other: _____ |

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after allowance or after an Office action under *Ex Parte Quayle*, 25 USPQ 74, 453 O.G. 213 (Comm'r Pat. 1935). Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, prosecution in this application has been reopened pursuant to 37 CFR 1.114. Applicant's submission filed on February 16, 2005 has been entered.

Election/Restrictions

1. Claims 1-37, 44, 49, 51, 60 and 63 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on September 3, 2004 in response to the Restriction Requirement mailed on August 2, 2004.

Specification

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claim 56 recites the limitation of a plurality of front slots between the basket and the lid. There is no support for this in the specification.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 39, 45, 47, 48, 54, 56-58, 61, 65-69, 76, 77, 79, 80, 84 and 85 rejected under 35 U.S.C. 102(b) as being anticipated by Lovatt (GB 2 200 340 A, August 8, 1988).

4. Regarding claims 39, 54, 56-58, 65-69, 84 and 85, Lovatt discloses a container (Figures 1-4) with a basket body with substantially smooth sided walls (12), a lid with a latch (8, page 2, lines 22-27) and horizontal ventilation slots (34) on four sides of the container between the basket and the lid to allow ventilation in two directions perpendicular to each other and parallel to the major and minor axes of the container (page 3, line 16 to page 4, line 7).

5. Regarding claims 45, 61, 76, 77; Lovatt discloses a ventilation channel in the bottom surface of the basket (Figures 1-3).

6. Regarding claim 79, Lovatt, discloses the container of claim 76 with substantially smooth sidewalls.

7. Regarding claim 80 Lovatt discloses the container of claim 76 with ventilation slots in each of the front, back and two sides.

8. Regarding claims 47 and 48, Lovatt discloses an edge catch latch for reversibly securing the lid to the basket (page 2, lines 22-27).

9. Claims 58, 61, 65-67, 76, 77, 79 and 80 are rejected under 35 U.S.C. 102(b) as being anticipated by Dehart (5,069,344).

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10. Regarding claims 58, 65-67, 79 and 80; Dehart discloses a container with a basket having smooth sidewalls (Figure 1), a lid (10), latch for securing the lid (22, Figures 4a-4b, column 3, lines 39-41), and ventilation slots on four sides of the container allowing bi-directional air flow.
11. Regarding claims 61, 76 and 77, Dehart discloses a bottom configured to form a ventilation channel to allow airflow under the container.
12. Claims 65, 76, 77 and 78 are rejected under 35 U.S.C. 102(b) as being anticipated by Sharp (GB 2 160 510 A, December 24, 1985).
13. Regarding claim 65, Sharp discloses a container (Figures 6-8) with a basket, a lid, a latch securing the lid (10, 21, page 2, lines 40-43) and ventilation slots for bi-directional air flow (12', 12", 16, page 2, lines 66-78).
14. Regarding claims 76, 77, the bottom of the container is configured to form a channel for airflow under the container (Figure 3).
15. Regarding claim 78, Sharp discloses a button latch for securing the lid (10, 21, page 2, lines 40-43).

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 39, 45, 47, 48, 58, 61, 64, 66, 79, 84 and 85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharp in view of Borst et al (4,570,818).

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18. Regarding claims 39, 58, and 64, Sharp discloses a container (Figures 6-8) with a basket, a lid, a latch securing the lid (10, 21, page 2, lines 40-43) and ventilation slots for bi-directional air flow (12', 12", 16, page 2, lines 66-78). Sharp does not teach that the basket is substantially smooth sided. Borst et al discloses a container with smooth sidewalls and no structural ribbing (Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of smooth sidewalls and no structural ribbing as disclosed by Borst et al in the container disclosed by Sharp to provide smooth surfaces for contact with the contents and minimize damage caused by sharp corners.

19. Regarding claims 45 and 61, Sharp discloses a ventilation channel under the container.

20. Regarding claims 47 and 48, Sharp discloses button latches for securing the lid (10, 21, page 2, lines 40-43).

21. Regarding claim 66, Sharp discloses the container of claim 65 as discussed in paragraph 13 above and Borst et al discloses a basket with smooth sidewalls as discussed in paragraph 18 above.

22. Regarding claim 79, Sharp discloses the container of claim 76 as discussed in paragraph 14 above and Borst et al discloses a basket with smooth sidewalls as discussed in paragraph 18 above.

23. Regarding claims 84 and 85, the container of claim 39 is disclosed as discussed in paragraph 18 above and Sharp further discloses airflow through the container in perpendicular directions and parallel to major and minor axes (page 2, lines 74-78).

24. Claims 67, 70-72, 74 and 75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharp and Borst et al in view of Hayes (6,644,494).

25. Regarding claim 67, the container of claim 66 is disclosed as discussed in paragraph 21 above but Sharp and Borst et al do not teach at least one ventilation slot in each of the front back and two side walls of the container. Hayes discloses a container with ventilation slots in the front, back and two side walls (200, 210, 220, 230, Figures 1-4, column 3, lines 19-40). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of ventilation slots in the front, back and two side walls as disclosed by Hayes in the container disclosed in claim 66 to provide for cooling ventilation completely through the container in two directions.

26. Regarding claims 70 and 72, the container of claim 67 is disclosed above and Sharp further discloses a hinge at the back of the basket (5, Figure 3).

27. Regarding claim 71, the container of claim 70 is disclosed above and Sharp further discloses slots between the basket and the lid (12', 12", Figures 7-8).

28. Regarding claims 74 and 75, container of claim 70 is disclosed above and Sharp further discloses a channel to allow airflow under the container (Figure 3).

29. Claims 80 and 81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharp in view of Hayes.

30. Regarding claim 80, Sharp discloses the container of claim 78 as discussed in paragraph 14 above but Sharp does not teach at least one ventilation slot in each of the front, back and two side walls of the container. Hayes discloses a container with

ventilation slots in the front, back and two side walls (200, 210, 220, 230, Figures 1-4, column 3, lines 19-40). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of ventilation slots in the front, back and two side walls as disclosed by Hayes in the container disclosed in claim 66 to provide for cooling ventilation completely through the container in two directions.

31. Regarding claim 81, Sharp further discloses the lid is attached to the basket with a hinge.

32. Claims 41-43 and 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lovatt in view of Quong (4,618,069) and Morgan (3,651,977).

33. Lovatt discloses the container of claims 39 and 58 but does not teach the use of a tray for shipping a plurality of containers. Quong discloses shipping of produce containers in trays for easy handling of a plurality of containers (column 2, lines 36-40). Morgan discloses a tray intended to hold a plurality of produce containers with netlike perforate walls providing air flow to vent holes in the containers and allowing airflow between the containers (Figure 1, column 1, lines 9-19). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of trays with netlike perforate walls to provide air flow to vent holes in the containers and allow airflow between the containers as disclosed by Quong and Morgan with the container disclosed by Lovatt to allow for efficient handling of a plurality of containers while providing adequate air flow to and between the containers.

34. Claim 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lovatt in view of Dehart. Lovatt discloses the container of claim 45 with a bottom ventilation

channel but does not teach use of a lower aperture in communication with the channel. Dehart discloses a container with a bottom ventilation channel and apertures (62, Figures 6 and 9) in communication with the channel to allow air to enter the basket (column 4, lines 43-46). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of apertures in the bottom ventilation channel as disclosed by Dehart in the container disclosed by Lovatt to allow air to enter the basket from the ventilation channel.

35. Claim 61 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lovatt in view of Timm et al (5,803,303). Lovatt discloses the container of claim 61 but does not teach that the ventilation channel comprises an arched surface. Timm et al discloses a container with a bottom vent channel having an arched surface (80, Figures 2-3). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a ventilation channel with an arched surface as disclosed by Timm et al in the container disclosed by Lovatt to provide for better air flow into the container.

Allowable Subject Matter

36. Claims 38, 50 and 83 are allowed.

37. Claims 40, 55, 73 and 82 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

38. The following is a statement of reasons for the indication of allowable subject matter: the allowable subject matter is the vent slots formed in the hinge of the

container. The closest prior art in Ott et al (4,883,195) discloses vents on the hinge side of a food container with the vents formed at the ends of the hinge.

Conclusion

39. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Amberg (Des. 256,097) discloses vents in the lid for ventilation in two directions.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Nathan Newhouse
Supervisory Patent Examiner
Art Unit 3727

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